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IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC13-1333

INQUIRY CONCERNING A JUDGE NO. 12-613
RE: Laura M. Watson

JUDICIAL QUALIFICATIONS COMMISSION'S REPLY BRIEF

On Review of the
Findings, Conclusions and Recommendations of the
Hearing Panel of the Judicial Qualifications Commission

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PREFACE

The Judicial Qualifications Commission will be referred to as the "JQC" in this Reply. Respondent, the Honorable Laura M. Watson, will be referred to as "Laura Watson" or "Judge Watson."

This matter is before the Court on review of the Findings, Conclusions and Recommendations by the Hearing Panel of the JQC entered on April 15, 2014 (hereinafter referred to as "Recommendation at ___"). On April 17, 2014, this Court entered an Order in which it directed Judge Watson to show cause why the Hearing Panel's recommended action should not be granted ("Show Cause Order"). All references to the official transcript of the final hearing in this matter will be designated by the prefix "T," followed by the volume and page number within the transcript. For instance, (T:1-3) refers to Volume 1 of the official transcript at page 3. All references to the JQC's Appendix to its Reply will be referred to as "JQC Appendix at ____." All references to Judge Watson's Appendix will be referred to as "Watson Appendix at ____."

On June 23, 2014, Judge Watson filed her Principal Brief in Opposition to the Findings, Conclusions, and Recommendations of the Hearing Panel, Judicial Qualifications Commission. All references to Judge Watson's Principal Brief Recommendation will be referred to as "Response at _____." On June 25, 2014, Judge Watson filed an Amended Principal Brief Correcting Scrivenor [sic] Error

Where the Embedded Fonts Were Corrupted In The Process Exporting To PDF. All references in this Reply to Judge Watson's "Response" will be to the page numbers in her Amended Principal Brief.

STATEMENT OF THE CASE

This case is before the court on the Findings, Conclusions and Recommendations of the Hearing Panel of the Judicial Qualifications Commission. On April 15, 2014, that body found that Judge Watson, currently a circuit judge in Broward County, Florida, is presently unfit to hold office and recommended that she be removed for conduct stemming from the manner in which, as an attorney, she settled certain insurance claims against the Progressive Insurance Companies ("Progressive").

On July 24, 2013, the Investigative Panel of the JQC filed a Notice of Formal Charges ("Formal Charges") against Judge Watson. The Formal Charges alleged as follows:

> YOU ARE HEREBY NOTIFIED that the Investigative Panel of the Florida Judicial Qualifications Commission, by the requisite vote, has determined pursuant to Rule 6(f) of the Rules of the Florida Judicial Qualifications Commission, as revised, and Article V. Section 12(b) of the Constitution of the State of Florida, that probable cause exists for formal proceedings to be, and the same are, hereby instituted against you to inquire into charges based on allegations that you violated Canons 1 and 2A of the Code of Judicial Conduct and violated Florida Bar Rules of Professional Conduct 3-4.2, 3-4.3, 4-1.4(a), 4-1.4(b), 4-1.5(f)(1), 4-1.5(f)(5), 4-1.7(a), 4-1.7(b), 4-1.7(c), 4-1.8(a), 4-1.8(g), 4-8.4(a), 4-8.4(c) and 5-1.1(f), to wit:

1. Prior to 2002, the firms of Marks & Fleischer, P.A., Kane & Kane, and Laura M. Watson, P.A. d/b/a Watson and Lentner, acting respectively by and through the firm principles, Gary Marks, Amir Fleischer, Charles Kane, Respondent Harley Kane, Laura Watson and Darin James Lentner, (hereinafter referred to collectively as the "PIP claim attorneys") represented healthcare provider clients in numerous lawsuits against various Progressive Insurance Companies (hereinafter referred to as "Progressive") regarding Personal Injury Protection claims (hereinafter referred to as "PIP claims").

2. You and the other PIP claim attorneys pooled your resources and solicited healthcare providers throughout Florida. By 2002, you, with the other PIP claim attorneys, collectively had approximately 440 healthcare provider clients who had some 2,500 PIP claims for unpaid bills and associated attorneys' fees against Progressive.

3. In 2002, you, together with the PIP claim attorneys, decided to pursue bad faith claims against Progressive in addition to the PIP claims.

4. In 2002 you joined with the PIP claim attorneys in hiring Stewart Tilghman Fox & Bianchi, William C. Hearon, P.A. and Todd S. Stewart, P.A. (hereinafter referred to as the "bad faith claim attorneys") to handle the bad faith claims.

5. Such bad faith claims were filed in the case styled *Fishman & Stashack, M.D., P.A. d/b/a Goldcoast Orthopedics, et al., v. Progressive Bayside Insurance Company, et al.*, Case No. CA-01011649, in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. (Hereinafter referred to as "Goldcoast").

6. The PIP claim attorneys, including yourself, entered into a contract with the bad faith claim attorneys wherein suit would be brought against Progressive alleging the bad faith claims on behalf of your mutual clients. It was contemplated that the clients would receive 60% of that recovery and the attorneys' fees would amount to

40%. It was further agreed by the parties that the bad faith claim attorneys would receive 60% of the attorneys' fees so recovered.

7. Initially the Goldcoast case encompassed a core group of approximately 40 healthcare providers. It was contemplated that bad faith claims would ultimately be asserted on behalf of all of the clients of the PIP claim attorneys.

8. In the course of said litigation, you and the PIP claim attorneys provided the bad faith claim attorneys with a list of 441 healthcare provider clients with either perfected or to be perfected bad faith claims and then approved a master claim list of said clients to be used in settlement negotiations with Progressive.

9. You, the PIP claim attorneys and the bad faith attorneys worked together for approximately two years.

10. The bad faith claim attorneys successfully obtained favorable rulings requiring disclosure of discovery by Progressive which strengthened the case. Specifically, the bad faith claim attorneys had obtained a ruling requiring Progressive to disclose damaging internal billing records. This ruling provided leverage for all bad faith and PIP claims.

11. In January 2004, the bad faith claim attorneys commenced settlement negotiations with Progressive which continued for the next several months.

12. You and the other PIP claim attorneys were periodically updated.

13. In May, 2004, certain PIP claim attorneys on their behalf and on your behalf secretly met with Progressive and settled all claims without notice to the bad faith claim attorneys.

14. The settlement was an aggregate settlement of $14.5 million for all PIP claims and all existing or future bad faith claims of all 441 healthcare provider clients. It was agreed to by you and the PIP claim attorneys without prior notice to or obtaining a fully informed consent from the clients. The methodology used by you and the PIP claim attorneys was intended to maximize your

attorneys' fees at the expense of the clients and the bad faith claim attorneys.

15. To memorialize the settlement, the PIP claim attorneys met with the Progressive attorneys and drafted a Memorandum of Understanding (hereinafter referred to as "MOU") which documented that all of the healthcare providers' PIP and bad faith claims, whether filed, perfected or just potential, were settled for the undifferentiated amount of $14.5 million dollars.

16. The secret settlement agreement between the PIP claim attorneys and Progressive failed to allocate any monies to the bad faith claims, although all the claimants were expected to release such claims.

17. After learning of the settlement and discovering that no monies had been allocated to the bad faith claims, the bad faith claim attorneys protested and objected to the MOU.

18. Thereafter, the MOU was amended, arbitrarily allocating $1.75 million dollars of the total settlement towards the settlement of the Goldcoast plaintiffs' bad faith claims.

19. Again, no monies were allocated to the bad faith claims of approximately 400 clients who were not included in the Goldcoast case, although those claims were required to be released as part of the settlement.

20. To consummate the settlement you and the other PIP claim attorneys prepared letters addressed to the healthcare provider clients. The letters did not disclose the several conflicts of interest inherent in the settlement, did not provide the clients a closing statement and did not advise the clients of the material facts necessary to make an informed decision about the case or execution of the releases.

21. You and the other PIP claim attorneys received the settlement funds from Progressive on or about June 22, 2004, and these funds were placed within the respective attorneys' trust accounts. Upon information and belief, the firm of Laura M. Watson, P.A. d/b/a

Watson and Lentner, received the amount of $3,075,000.00. From which $361,470.30 in benefits were paid to your clients. You failed to provide your clients with closing statements as required by Florida Bar rules.

22. When the bad faith claim attorneys learned the particulars of the secret settlement they also notified you and the other PIP claim attorneys that in accordance with Florida Bar rules governing claims of disputed ownership of property, all of the attorneys' fees should be held in escrow.

23. You did not hold the funds in trust and instead disbursed the settlement fees contrary to Florida Bar rules regulating trust accounts.

24. By the conduct set forth above, you violated R. Regulating Fla. Bar 3-4.2; 3-4.3; 4-1.4(a); 4-1.4(b); 4-1.5(f)(1); 4-1.5(f)(5); 4-1.7(a); 4-1.7(b); 4-1.7(c); 4-1.8(g); 4-8.4(a); 4-8.4(c); and 5-1.1(f).

These acts, if they occurred as alleged, would impair the confidence of the citizens of this State in the integrity of the judicial system and in you as a judge; would constitute a violation of the Preamble and Canons of the Code of Judicial Conduct; would constitute conduct unbecoming a member of the judiciary; would demonstrate your unfitness to hold the office of judge; and would warrant discipline, including, but not limited to, your removal from office and/or any other appropriate discipline recommended by the Florida Judicial Qualifications Commission.

COLLATERAL PROCEEDINGS

A. FEDERAL ACTION

Judge Watson's hearing before the Hearing Panel was scheduled to commence on Monday, February 10, 2014. In an attempt to delay that proceeding, on Friday, February 7, 2014, Judge Watson filed a Complaint in the United States District Court for the Southern District of Florida against the JQC, and several

members of the Hearing Panel in their official and individual capacities ("Federal Action"). She also named as defendants the JQC's Executive Director, General Counsel, and Special Counsel. In addition to her claims for monetary relief, Judge Watson filed motions for a temporary restraining order, preliminary injunction, and permanent injunction in which she requested that the District Court enjoin the JQC from proceeding with her disciplinary hearing.

In denying Judge Watson's claims for injunctive relief, the District Court noted that under *Younger v. Harris*, 401 U.S. 37 (1971), abstention from interference with state proceedings is appropriate where: (1) there is an ongoing state judicial proceeding; (2) the state proceeding implicates important state interests; and (3) there is an adequate opportunity in the state proceeding to raise constitutional challenges. Finding that all three elements for *Younger* abstention were present, the District Court entered its Order Denying Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction on February 9, 2014 ("Abstention Order"). Consequently, Judge Watson's hearing before the Hearing Panel proceeded on February 10-12, 2014.

On February 27, 2014, the District Court entered a separate order dismissing the Federal Action. ("Dismissal Order"). Judge Watson has appealed from both the Abstention Order and the Dismissal Order. Those appeals have been consolidated, and both appeals are currently pending before the United States

Court of Appeals for the Eleventh Circuit. Briefing has not yet been completed in those appeals.

B. DECLARATORY JUDGMENT ACTION

On April 11, 2014, Judge Watson filed an original Petition for Declaratory Relief in this Court. In her Petition for Declaratory Relief, Judge Watson sought a declaration, *inter alia*, that the JQC was without jurisdiction to initiate formal charges against her and that the JQC's enforcement of its rules of procedure violated her due process rights. She also sought an injunction to enjoin the JQC from issuing its Findings and Recommendation of Discipline. The claim for injunctive relief against the Hearing Panel quickly became moot as the Hearing Panel issued its Recommendation on April 15, 2014. Alternatively, Judge Watson sought "an order stating that the Florida Supreme Court *does not* have jurisdiction over these matters so that these proceedings and important state interests can be addressed by the United States District Court." *See* Declaratory Relief Petition at 3.

Thereafter, on April 23, 2014, Judge Watson filed a Motion to Stay JQC Proceedings and Briefing, and/or Motion for Extension of Time ("Motion for Stay") in this Court. In her Motion for Stay, she requested that the Court stay the JQC proceedings "pending the final disposition of the Petition [for Declaratory Relief] she filed in the Florida Supreme Court, and the Appeals she is filing in the

11th Circuit Court of Appeals, both of which are directed towards the JQC's proceedings and briefing significantly . . . ." Judge Watson also sought an extension of time to respond to the Court's Show Cause Order, which had been previously entered by the Court on April 17, 2014, following receipt of the Hearing Panel's Recommendation. The JQC opposed the Motion for Stay. By Order dated May 21, 2014, this Court denied the Motion to Stay.

Notwithstanding the denial of her Motion to Stay, Judge Watson filed additional motions for an extension and/or to toll time to respond to the Court's Show Cause Order. By Order dated June 12, 2014, this Court entered an order directing Judge Watson to respond to the Show Cause Order by June 23, 2014, failing which the case would be submitted to the Court for consideration without a response.

STATEMENT OF FACTS

Prior to her election to the bench in November 2012, Judge Watson was the sole owner of her law firm, Laura M. Watson, P.A. d/b/a Watson & Lentner (T:3-285). Her husband, Todd Lentner, was employed by the firm, but was not an owner. In the ordinary course, a significant part of the firm's business consisted of representing health care providers in claims against insurance companies to recover under the personal injury protection ("PIP") provisions of insurance policies. (T:3-371-72). Judge Watson's law firm eventually collaborated with two

other law firms, Marks & Fleischer, P.A. and Kane & Kane (collectively the "PIP lawyers") to represent healthcare providers in PIP litigation against Progressive. (T:1-89-90); (JQC Exb. 6).

In order to increase their leverage against Progressive, the PIP lawyers elected to pursue bad faith litigation against Progressive. To that end, the PIP lawyers sought the assistance of Todd Stewart of Slawson Cunningham Whalen & Stewart, P.A., to initiate a lawsuit against Progressive based on its bad faith refusal to settle claims. Todd Stewart did file a bad faith case (hereinafter the "Gold Coast case"). When Todd Stewart left the Slawson firm to form his own practice, he solicited the interest of his father, Larry Stewart (hereinafter "Stewart"), a very experienced personal injury lawyer with the firm of Stewart, Tilghman, Fox & Bianchi, P.A., to assist with the Gold Coast case. (T:1-53-60).

In early 2002, Stewart had an initial meeting with Laura Watson, Darin Lenter, Amir Fleischer and Gary Marks in Stewart's Miami office (T:1-61). During that meeting, Stewart learned of the PIP lawyers' concerns that Progressive had been "either shorting or denying doctor's bills under the personal injury protection benefit [on] auto insurance policies" on a "systematic basis" and that the PIP lawyers didn't believe Progressive had a legal reason to short the bills or deny the bills (T:1-63).

Following a second meeting between Stewart and the PIP lawyers, Stewart agreed to handle the Gold Coast case and the parties discussed arrangements for moving forward (T:1-65). On or about June 12, 2012, Stewart's firm, Todd Stewart, P.A., William Hearon, P.A. (collectively the "Bad Faith lawyers") and the PIP lawyers entered into an employment contract (formally titled "Authority to Represent – Contract of Employment") with a single client, Fishman & Stashak, M.D.'s, P.A. d/b/a Gold Coast Orthopedics also d/b/a Gold Coast Orthopedics and Rehabilitation ("Gold Coast") to represent Gold Coast "in connection with any and all claims or actions for bad faith, unfair claims handling practice, improper claims handling, fraud and/or unjust enrichment" which Gold Coast may have against the Progressive entities. (T:1-67) (JQC Exb. 1).

Under the terms of the employment contract, the PIP lawyers and Bad Faith lawyers were retained on a contingent fee basis with 60% of any bad faith attorneys' fees being awarded to the Bad Faith lawyers, and 40% being awarded to the PIP lawyers. Unbeknownst to the Bad Faith Lawyers, Watson's firm had a secret side agreement with Gold Coast, guaranteeing that Gold Coast would receive 30% of the gross bad faith recovery (50% of the plaintiffs' 60%) regardless of the number of plaintiffs or claims involved. (T:2-183-84).

After the parties executed the employment contract, the Bad Faith lawyers amended the Gold Coast complaint that Todd Steward had originally filed and

began propounding discovery (T:1-76). Stewart testified that in time, other plaintiffs were added to the bad faith litigation, bringing the total number of plaintiffs to thirty-eight (38). (T:1-81). Stewart testified that additional plaintiffs were added to the Gold Coast case because "we wanted to expand the litigation beyond just a claim of single doctor's office." (T:1-76). Progressive aggressively resisted the discovery sought by the Bad Faith lawyers (T:1-82). The parties' discovery disputes eventually prompted the circuit court to appoint a special master. The special master eventually entered an order directing Progressive to turn over certain materials (T:1-83). After the circuit court affirmed the special master's ruling and the Fourth District Court of Appeal denied Progressive's petition for certiorari to review the circuit court's ruling, the pending production of records appeared to incentivize Progressive to initiate settlement negotiations (T:1-83-84).

Stewart conveyed to the PIP lawyers, including Laura Watson, the settlement overtures, from Progressive. Stewart eventually had a meeting with the PIP lawyers, including Laura Watson, to discuss a strategy for how to respond to Progressive (T:1-90). In response to a request by Progressive, Stewart and the PIP lawyers agreed to present to Progressive a list of all of the clients (totaling 441 at the time) represented by the PIP lawyers' three law firms. (T:1-95). Stewart and the PIP lawyers decided that Stewart would demand $20 million from Progressive

to settle the bad faith claims (T:1-95-96). In approximately March 2004, Progressive offered $2 million to settle the bad faith claims (T:1-96). That settlement offer did not include the PIP claims (T:1-96-97). Stewart informed Progressive that he considered the $2 million offer to be "ridiculous." (T:1-96).

Shortly thereafter, Stewart had further discussions with Progressive. During those discussions, Progressive suggested that it wanted to expand the scope of the settlement negotiations to encompass not only the bad faith claims, but all of the PIP claims as well as the PIP lawyers' claims for attorneys' fees. (T:1-97). Stewart reported the apparent change in scope of the negotiations to the PIP lawyers (T:1-97). Based upon Progressive's new settlement posture, the PIP lawyers, in turn, authorized Stewart to try to settle their PIP claims as well. *Id.* That authorization, in turn, prompted a change in the contractual terms previously agreed upon by the attorneys. (T:1-98). Whereas, under the terms originally agreed upon, the Bad Faith lawyers would receive 60% of the attorneys' fees awarded in the bad faith case, they would now be entitled to 75% of the attorneys' fees based upon their expanded scope of work (T:1-98). The change in fee division between the Bad Faith lawyers and the PIP lawyers did not affect the clients' share of recovery in the bad faith litigation. *Id.*

In conjunction with the PIP lawyers' instruction to Stewart to negotiate the settlement of the PIP claims as well as the bad faith claims, Stewart informed the

PIP lawyers, including Judge Watson, that the PIP claims and the bad faith claims would have to be negotiated separately (T:1-99-100). As Stewart explained before the Hearing Panel, there was a "conflict between the two types of claims":

> In the bad faith claims, the clients would be receiving 60% of the recovery. Whereas in the PIP claims, all they would get is their unpaid benefits. And, as explained to me by the PIP lawyers, that meant about 90% of what was recovered in PIP claims amounted to attorneys' fees that the PIP lawyers kept. So, there was a big disparity between what the clients got depending upon the type of claim, and that's a conflict that you can't put that all in the same pot and settle it as one complete mass of stuff.

(T:1-99-100). Stewart informed the PIP lawyers that in order to pursue a global resolution of the bad faith claims and PIP claims, the bad faith claims would have to be negotiated first because "there [was] no way Progressive would [negotiate] the PIP claims first because that would automatically perfect thousands of bad faith claims and create good causes of action in all of those claims." (T:1-100).

Stewart later attended a mediation conference in the Gold Coast case. (T:1-101). At the outset of the mediation conference, Stewart informed Progressive that the Bad Faith lawyers were prepare to negotiate the bad faith claims first and, if the parties were successful, they could immediately (that same day) negotiate the PIP claims (T:1-102). The mediation resulted in an impasse as the parties never reached agreement on the bad faith cases. *Id.* Progressive offered $3.5 million to settle the bad faith cases before an impasse was declared. (T:1-102). Stewart

reported the outcome of the mediation conference to the PIP lawyers, including the fact that the mediator told him he had reason to believe Progressive had $6 to $7 million in authority, but was unwilling to offer it on the day of mediation (T:1-103).

Following the mediation conference, Stewart renewed his efforts to obtain document discovery from Progressive (T:1-105). Progressive again resisted any efforts to produce documents, which ultimately prompted the Bad Faith lawyers to move to compel the production of documents and for sanctions (T:1-105). The circuit court ordered that the documents be produced and also ordered that sanctions would be imposed as a result of Progressive's failure to produce documents. (T:1-106). Prior to the upcoming hearing on sanctions, Stewart learned that the PIP lawyers had secretly met with Progressive representatives and negotiated a settlement. (T:1-106-08). Stewart testified that he learned of the settlement after the fact through an e-mail he received from the PIP lawyers, advising him, "There's been some developments in the case that we have to discuss, and we need to have a meeting." (T:1-108).

The settlement was memorialized in a document entitled Memorandum of Understanding ("MOU") executed May 17, 2004, by the Progressive entities, Laura Watson, on behalf of her professional association and its clients and the other PIP lawyers. (JQC Exb. 3). Among other things, the MOU contemplated the

global settlement of all claims against Progressive, including all pending lawsuits, all perfected, unfiled bad faith claims actually asserted, and any bad faith claims that could be perfected from January 1, 2001 through the date of the MOU. (JQC Exb. 3; JQC Exb. 8). It is undisputed that the original MOU did not allocate any funds to the bad faith claims (T:3-327).

According to the MOU, Progressive agreed to pay $14.5 million, allocated as follows: $4 million to Laura M. Watson, P.A. d/b/a Watson & Lentner on behalf of the law firm and its clients; $5 million to Marks & Fleischer, P.A. on behalf of the law firm and its clients; and $5.5 million to Kane & Kane on behalf of the law firm and its clients. (JQC Exb. 3). Although none of the settlement proceeds were allocated to bad faith claims, the PIP lawyers and their clients were required to release all perfected and unperfected bad faith claims, claims for unfair claims handling practices, compensatory and punitive damages, and related attorneys' fees and costs. (JQC Exb. 3). To trigger payment under the MOU, the PIP lawyers had to deliver releases from the Gold Coast plaintiffs and 90% of their other clients (JQC Exb. 3).

The PIP firms also agreed to "defend, indemnify and hold [Progressive] harmless" from "any and all claims which counsel of record in the GOLDCOAST ACTION" (*e.g.* the Bad Faith lawyers) could assert for attorneys' fees and costs arising from their prosecution of the Gold Coast case. (JQC Exb. 3). Further, the

terms of the MOU were "strictly confidential," and not to be revealed "to any person, firm or corporation or other entity (except for disclosure by a party to its accountants)" (JQC Exb. 3).

Stewart testified that he had a meeting with the PIP lawyers, including Watson, after receiving the innocuous email concerning "developments in the case." *Id*. He testified that the PIP lawyers refused to tell him anything concerning the settlement, except that zero dollars had been allocated for the bad faith case he had been retained to handle. (T:1-109). Stewart advised the PIP lawyers that it was unethical for them to have settled all of the claims in a single settlement because it violated the aggregate settlement rule. (T:1-120). He also testified that the PIP lawyers offered him $300,000.00 for his work in the case, although "they did not explain how they arrived at that number." (T:1-110).

Approximately ten (10) days following the execution of the MOU, Watson's firm forwarded a letter agreement for signature by the firm's clients in connection with the settlement. Among other things, the letter failed to disclose:

- The settlement reflected in the MOU included a release of all bad faith claims, but allocated no specific amount to those claims;
- The settlement was for $14.5 million dollars, but the clients were to receive nothing for the release of their bad faith claims due to the PIP lawyers' allocation of the settlement proceeds;
- The amount of attorneys' fees to be paid as a result of the settlement.

(JQC Exb. 8).

On the following day, May 28, 2004, Stewart sent a letter directly to Gold Coast in which he wrote, in part, as follows:

> [W]e were informed by Darin Lentner via e-mail last week that the law firms of Marks & Fleischer, Kane & Kane and Watson & Lenter had apparently reached a secret settlement with Progressive that "substantially affected the Bad Faith Case." This settlement has been negotiated without our knowledge, notwithstanding our continuous and ongoing efforts on your behalf, about which we have kept the three firms fully informed. Both in writing and verbally we have repeatedly requested that those firms provide us with information regarding the purported settlement, the most recent having occurred yesterday afternoon. Those firms have refused to tell us anything about the settlement except to tell us that the bad faith case has been settled but no money is being received for the bad faith claims. Given what has already been offered on the bad faith claims and the potential impact of this new evidence, it appears that your rights may have been compromised or even sacrificed.

(Respondent's Exb. 20(E)).

Thereafter, June 16, 2004, Watson's firm sent a letter to the 36 named Bad Faith clients, advocating that they accept the settlement with Progressive. This letter began with the following legend in very conspicuous type-face:

> **BELOW IS A CONFIDENTIAL SETTLEMENT OFFER FROM THE PROGRESSIVE ENTITIES. DO NOT DISCLOSE, PUBLICIZE, OR DICUSS IN ANY WAY, THE AMOUNT OR OTHER TERMS OF THIS AGREEMENT WITH ANYONE OTHER THAN YOUR ACCOUNTANT**.

(JQC Exb. 7). The letter went on to state that in an attempt to resolve any differences with Larry Stewart and "to alleviate any of his concerns regarding the Progressive settlement," "further negotiations" with Progressive had resulted in Progressive's offer of $1.75 million dollars to resolve the Bad Faith litigation. The letter specifically stated "[r]ather than 496 providers splitting $3.5 million, we have convinced Progressive to offer $1.75 million to the named plaintiffs of which you are one." The letter further proposed that the $1.75 million would be allocated among the 36 plaintiffs according to a formula under which each of them would be guaranteed a sum equal to the amount each plaintiff had previously been offered with the remainder of the monies being divided on a pro-rata basis.

Notably, Watson's firm's June 16, 2004, letter failed to disclose that (1) Progressive had already paid $14.5 million to settle all claims; (2) no new money had been offered to resolve the bad faith claims; and (3) the PIP firms had simply re-allocated $1.75 million of the original $14.5 million from PIP to bad faith claims.

On the same day that Watson's firm sent the aforementioned letter to the approximately 36 PIP clients of her firm, the PIP lawyers and Progressive entered into an Amended Memorandum of Understanding. (JQC Exb. 4). Although the Amendment made no change to the aggregate $14.5 million figure being paid by Progressive, the $14.5 million was re-allocated as follows: $1.75 million was

allocated to the Gold Coast case specifically and the amounts payable to the PIP lawyers were adjusted as well: $3,075,000 to the Watson firm and clients; $4,380,000 to Marks & Fleischer, P.A. and its clients; and $5,250,000 to Kane & Kane and its clients (JQC Exb. 4). Similar to the original MOU, the Amendment required the PIP law firms to "defend, indemnify, and hold the Progressive entities harmless from any claims which the Bad Faith Attorneys" may assert for attorneys' fees and costs arising out of their prosecution of the Gold Coast action. As with the original MOU, Stewart was excluded from any negotiations of the Amendment and did not learn of its existence until sometime after the fact (T:1-131-22).

Thereafter, on June 22, 2004, Watson, on behalf of the clients in the Gold Coast cases, co-signed a letter with Gary Marks, in which she discharged the Bad Faith lawyers, effective immediately. Watson's letter stated, in pertinent part, as follows:

> The Plaintiffs in the Bad Faith Case have given the PIP Firms authority to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms and filing any necessary documents in the Bad Faith Case. Your discharge is effective immediately. In order to protect the interest of these clients, you are further instructed to cancel any pending hearings, motions or other events currently scheduled, including, but not limited to the Plaintiffs' Motion for Attorneys' Fees set before the Special Master, the Honorable Herbert Stettin

> on June 23, 2004. Moreover, your immediate withdrawal from representation is required. For your review on this matter, we have attached the signed authorizations from the Plaintiffs to discharge you and take any necessary actions.

(Watson Exb. 20(M)).

Shortly thereafter, the Bad Faith lawyers filed suit against Kane & Kane, Laura M. Watson, P.A. d/b/a Watson & Lentner, Charles Kane, Harley Kane, Laura Watson and Darin Lentner in the Circuit Court for Palm Beach, County. Following a non-jury trial lasting approximately 10 weeks, the Honorable David Crow entered a Final Judgment ("Final Judgment") in favor of the Bad Faith lawyers and against Laura M. Watson, P.A., d/b/a Watson & Lentner. Among the findings Judge Crow made in the Final Judgment were the following salient points:

- The fact that the initial MOU did not allocate any of the $14.5 million in settlement proceeds to the "bad faith" claims was attributable to the fact that the Defendant law firms [*e.g.* PIP lawyers] intended to allocate 90% of the initial settlement proceeds to attorneys' fees.

- The real reason for the reallocation of the settlement amount in the amended MOU "was to maximize attorney's fees recovery and to limit the amounts the Plaintiffs [*e.g.* Bad Faith lawyers] could claim in fees while attempting to cure, after the fact and on the surface only, serious ethical flaws in the settlement procedure."

- The methodology used by the Defendant law firms in creating th[e] settlement violated a number of rules, including Rules 4-1.5(f)(1) and (5), 4-1.7(a), (b) and (c), 4-1.8 and 4-1.8(g) and 4-1.4 of the Rules of Professional Conduct.

(JQC Exb. 10 at 9, 10 and 19).

The Final Judgment included an award against Laura M. Watson, P.A. in the amount of $981,792.00 on the Plaintiffs' unjust enrichment claim. (JQC Exb. 10). With respect to the unjust enrichment claim, Judge Crow determined that:

> The Plaintiffs' work resulted in favorable rulings which opened the door to settlement when Defendants had been unable to make any progress in that regard on their own. In addition, the evidence establishes that Defendant law firms, unfairly deprived Plaintiffs of a fee by ignoring multiple conflicts of interest, misrepresenting the terms of settlement to the Plaintiffs, misrepresenting the terms of the settlement to the clients to obtain the releases to trigger payment, manipulating the allocation of the settlement to obtain most of it as attorneys' fees, and by discharging Plaintiffs for no reason.

(JQC Exb. 10 at 19). Judge Crow declined to enter judgment against Judge Watson personally based on his finding that only her professional association was a party to the agreements at issue. *Id.* at 21. Notably, the Final Judgment also included the following provision:

> 7. A copy of this opinion is being forwarded to The Florida Bar for action, if any, in regard to the Court's finding of violations of Rules of Professional Conduct 4-1.5(f)(1) and (5), 4-1.7(a)((b) and (c) and 4-1.8 and 4-1.8(g) and 4-1.

(JQC Exb. 10 at 23).

SUMMARY OF ARGUMENT

"The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight." *In re Davey,* 645 So.2d 398, 404 (Fla. 1994). "Before reporting findings of fact to this Court, the JQC must conclude that they are established by clear and convincing evidence." *In re Granziano,* 696 So. 2d 744 (Fla. 1997). Clear and convincing evidence is an intermediate standard of proof, which is more than a preponderance of the evidence, but less than beyond a reasonable doubt. As this court stated in *Davey,* "[t]he evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy." *Davey,* 645 So. 2d at 404. Nonetheless, this Court has noted that "'even where the evidence is in conflict, the proof may be more than sufficient to meet the standard of clear and convincing evidence.'" *In re Henson,* 913 So. 2d 579, 592 (Fla. 2005) (quoting *In re Bryan,* 550 So. 2d 447, 448 n.* (Fla. 1989)); *see also In re Guardianship of Schiavo,* 780 So. 2d 176, 179 (Fla. 2d DCA 2001) ("The clear and convincing standard of proof, while very high, permits a decision in face of inconsistent or conflicting evidence.").

Here, following an "independent review of [the] evidence, [its] observations, and credibility determinations of the witnesses," the Hearing Panel determined that

the facts alleged in the Notice of Formal Charges were proven by clear and convincing evidence. *See* Recommendation at 26. The Hearing Panel likewise concurred in the findings made by Judge Crow in the Final Judgment, which judgment had previously been affirmed by the Fourth District Court of Appeal.[1] *Kane v. Stewart Tilghman Fox, & Bianchi*, P.A., 85 So. 3d 112, 113 (Fla. 4th DCA 2012) (describing the Final Judgment as "thorough and well-reasoned" and noting the trial court's characterization of the underlying facts as "a case study for a course on professional conduct involving multi-party joint representation agreements and the ethical pitfalls surrounding such agreements when the interests of some of the attorneys and/or their clients come into conflict.").

Although Judge Watson claims the Hearing Panel "made 72 grossly inaccurate findings" as described in Tab 6 of the Appendix to her Response, the various arguments raised in the body of her Response are all permutations of three

[1] In the Final Judgment, Judge Crowe also entered judgment against Kane & Kane, Harley Kane, and Charles Kane, jointly and severally, in the amount of $2,000,000.00. Parenthetically, the Kanes subsequently filed for bankruptcy and sought to discharge the judgment against them. Following a six-day trial, the bankruptcy court denied the Kanes' attempt to discharge the judgment. Thereafter, the United States District Court for the Southern District of Florida affirmed the bankruptcy court. In turn, the Eleventh Circuit Court of Appeals recently affirmed the district court. In separate written opinions, all three of those courts recounted the facts underlying settlement of the Gold Coast case and their findings mirror those found by the Hearing Panel. *Stewart Tilghman Fox & Bianchi, P.A. v. Kane*, 470 B.R. 902 (S.D. Fla. Bankr. 2012), *aff'd, Kane v. Stewart Tilghman Fox & Bianchi*, 485 B.R. 460 (S.D. Fla. 2013), *aff'd, Kane v. Stewart Tilghman, Fox & Bianchi*, 2014 U.S. App. LEXIS 12040 (11th Cir. June 26, 2014).

primary contentions: (i) the JQC does not have jurisdiction to investigate her for claims of misconduct which occurred approximately 10 years before she was elected to the bench; (ii) she was denied due process throughout the proceedings before the Hearing Panel; and (iii) the JQC is time-barred from proceeding against her. As elaborated upon below, each of these contentions is frivolous and should be rejected by this Court.[2]

First, Judge Watson's contention that the JQC does not have jurisdiction to investigate her for attorney misconduct that preceded her election to the bench, has been previously rejected by this Court and is clearly foreclosed by Article v, section 12 of the Florida Constitution. Under the state constitution, as well as established precedent of this court, JQC proceedings are constitutionally authorized for misconduct committed by a judge during the time he or she was a lawyer.

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[2] Consistent with her "deny everything-concede nothing" approach throughout these proceedings, one of the "72 grossly inaccurate findings" about which Judge Watson complains is the Hearing Panel's recitation in the **Course of Proceedings** section of its Recommendation that "On May 16, 2012, the [F]inal [J]udgment was affirmed." Kane v. Stewart Tilghman Fox & Bianchi, P.A. 85 So. 3d 1112 (Fla. 4th DCA 2012). She attacks that finding on the basis that it "lack[s] evidentiary support and the JQC fails to note any record citation for th[at] conclusion[]." *See* Watson Appendix at Tab 6. Judge Watson claims as "grossly inaccurate" 14 other statements in the Course of Proceedings section of the Hearing Panel's Recommendation. Those statements are all background information and are not part of the Hearing Panel's formal findings.

Second, although Judge Watson claims she was denied due process before the Hearing Panel, her claims are devoid of any substantive merit. For instance, she claims she was denied due process because she was not afforded the right to take an interlocutory appeal of the Hearing Panel's denial of her motions to disqualify certain Hearing Panel members; yet, she offers no reason now why the Hearing Panel's conclusion that her motions were legally insufficient is erroneous. More fundamentally, she fails to demonstrate why the denial of her disqualification motions could not be considered just as efficiently in conjunction with her response to the Court's Show Cause Order.

Third, Judge Watson asserts that because the statute of limitations for The Florida Bar to proceed against her passed, the Bar cannot expand its statute of limitations by passing the matter on to the JQC. That argument is indicative of Judge Watson's misapprehension of the JQC's jurisdiction. To be clear, the JQC's jurisdiction over Judge Watson is predicated on the state constitution. That jurisdiction is triggered when a lawyer becomes a judge, although the JQC is constitutionally authorized to investigate acts of misconduct which occurred while the judge was still a practicing lawyer. Stated differently, a lawyer who violates the Rules Regulating The Florida Bar cannot avoid discipline simply by escaping to the bench. Thus, irrespective of whether the statute of limitations for the Bar

has expired, the JQC has an independent basis upon which to investigate and discipline Judge Watson.

Stripped of its embellishment, Judge Watson's argument is that she should not have to account to anyone for her conduct – be it the JQC or the Bar. On the one hand, she contends the Bar lost jurisdiction over her because it never filed a formal complaint before her election (a claim she makes despite the fact she requested, and the Bar agreed, to defer grievance proceedings against her pending appellate review of the Final Judgment). Concomitantly, she argues that the JQC does not have jurisdiction over her because the JQC can only investigate matters occurring within a reasonable time frame, but not to exceed two years, "and only if [those matters] are germane to an alleged act of misconduct occurring after the judge takes office." *See* Response at 102-03. Judge Watson's position is as legally flawed as it is indicative of her refusal to accept responsibility for her conduct.

Lastly, with respect to the Hearing Panel's recommended discipline of removal, Judge Watson does not suggest that the recommended discipline is disproportionate to the findings made by the Hearing Panel. That is not surprising as the Hearing Panel concluded that Judge Watson succumbed to greed and orchestrated a secret settlement of her clients' claims whereby "[s]he sold out her clients, her co-counsel, and ultimately herself." *See* Recommendation at 38. The Hearing Panel ultimately concluded that Judge Watson's conduct was so

"fundamentally inconsistent with the responsibilities of judicial office" that it warranted removal. That recommendation is consistent with prior recommendations of removal made to, and approved by, this Court. Under these circumstances, evidence of Judge Watson's character of her otherwise unblemished judicial record is irrelevant.

ARGUMENT

I. THE STATE CONSTITUTION AUTHORIZES THE JQC TO DISCIPLINE JUDGE WATSON FOR PRE-JUDICIAL CONDUCT

Despite clear authority to the contrary, Judge Watson contends that "[t]he clear and unambiguous language of both the Florida Constitution, as amended and the FJQCR [Florida Judicial Qualifications Commission Rules] restricts [sic] the jurisdiction of the JQC to actions of a person while a judge, a candidate for judicial office, or someone performing a judicial function such as a child support hearing officer or special magistrate." *See* Response at 82. The Florida Constitution contains no such restrictions. Rather, Article v, section 12 of the Florida Constitution provides that:

> There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, ***during term of office or otherwise*** occurring on or after November 1, 1966 . . . demonstrates a present unfitness to hold office . . . .

(emphasis added). In construing that provision in *In re Henson*, 913 So. 2d 579, 88 (Fla. 2005), this Court reaffirmed the longstanding principle that **"[m]isconduct committed by an attorney who subsequently becomes a judge falls within the subject matter jurisdiction of the Florida Supreme Court and the JQC, no matter how remote**." *Id*. (emphasis added). *Henson*, in turn, followed this Court's decision in *In re Davey*, 645 So. 2d 398 (Fla. 1994), where Judge Davey argued, similar to Judge Watson here, that JQC proceedings were not constitutionally authorized for pre-judicial conduct. Rejecting such a narrow view of article v, this Court commented:

> **The language of [art. V] section 12 [of the Florida Constitution] is unambiguous on its face and we conclude it means just what it says**: The Commission may investigate and recommend the removal or reprimand of any judge whose conduct inside or outside of office warrants such action. **This Court has consistently ruled that pre-judicial conduct may be used as a basis for removal or reprimand of a judge**.

Id. at 403 (holding that the JQC acted within its authority when it investigated Judge Davey's handling of two cases nearly a decade earlier while he still practiced law); *see also id*. (citing collection of cases for proposition that pre-judicial conduct may be used as a basis for discipline of a judge).

In an attempt to circumvent *Davey* and its progeny, Judge Watson alternatively argues that the JQC's "interpretation" of art. v, section 12 allows the JQC "to effectively place new qualification requirements on judicial candidates,

violates the Florida Constitution, and would effectively allow some of the fifteen (15) JQC members to be the final arbiter of judicial elections and appointments . . . ." *See* Response at 90. Expounding on this argument, Judge Watson contends that "[t]he JQC's attempt to exercise jurisdiction over [her] almost immediately after she was sworn in as a constitutional officer, is nothing short of an attempt to do an end-run around the will of the Voters." *Id.* at 92.

Though creative, Judge Watson's argument fails for precisely the reason this Court rejected the respondent judge's argument in *Davey*. Here, as in *Davey*, there is no need for this Court to resort to interpretation. This Court has previously determined that "[t]he language of [art. v] section 12 is unambiguous on its face and . . . means just what it says . . . ." *Davey*, 645 So. 2d at 403.

A. <u>Judge Watson Was Not Found Guilty of Violating Canons 1 and 2A</u>

In *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), this Court held that "Canons 1, 2, and 3 . . . are directed only to a judge and hence cannot constitute an independent violation as to a judicial candidate who is not yet a judge." *Id*. at 85. Relying upon *Kinsey*, Judge Watson argues that the Hearing Panel erred by denying her pre-trial motions to dismiss the Formal Charges to the extent they alleged a violation of Canons 1 and 2A and the Preamble of the Code of Judicial Conduct. *See* Response at 82-88. Specifically, Judge Watson argues that "the undisputed facts of this case, wherein Judge Watson's alleged (non-criminal) misconduct occurred when she

was not a judge, not a candidate for judicial office, and not performing any judicial function, ***cannot support a finding of liability on her part for violations of the Preamble and Canons 1 and 2A of the Code of Judicial Conduct***." *See* Response at 19 (emphasis added).

Contrary to Judge Watson's argument, however, the Hearing Panel did not find her guilty of violating the Preamble to, or Canons 1 and 2A, of the Code of Judicial Conduct. Rather, the Hearing Panel found her guilty of violating only the Rules Regulating The Florida Bar. *See* Recommendation at 31-32. Consequently, even assuming *arguendo* the Hearing Panel should have granted her pre-trial motions to dismiss the charges predicated on alleged violations of the Preamble and Canons 1 and 2A, that failure is inconsequential because the charges of which Judge Watson was ultimately found guilty were all based on violations of the rules of professional conduct. *See* Recommendation at 31-32. *See Kinsey*, 842 So. 2d at 85 (finding that although Judge Kinsey, as a judicial candidate, should not have been found guilty of violating Canons 1, 2, and 3, those findings did not invalidate the charges of which she was found guilty "[b]ecause all formal charges sustained by the JQC were also premised on alleged violations of Canon 7, which expressly applies to judicial candidates . . . . .").

II. JUDGE WATSON WAS NOT DENIED DUE PROCESS BECAUSE OF HER INABILITY TO TAKE AN INTERLOCUTORY APPEAL OF THE JQC'S ORDERS DENYING HER MOTIONS TO DISQUALIFY CERTAIN HEARING PANEL MEMBERS

Judge Watson next claims that she was denied due process because "[p]ursuant to the current framework of the FJQCR and Florida law, [she] had no procedural remedy to have the [Hearing Panel's] decisions [denying her motion to disqualify certain members of the Hearing Panel] reviewed prior to the Final Hearing and [R]ecommendation by the Hearing Panel." *See* Response at 72. Relying upon the U.S. Supreme Court's decision in *Ward v. Village of Monroeville*, 409 U.S. 57, 59-60 (1972), Judge Watson claims that "the failure of the JQC process to provide for an [interlocutory review] of [the Hearing Panel's] denials for disqualification is "a per se denial of the due process clause of the Fourteenth Amendment and a subsequent review of the JQC's recommendation by the Florida Supreme Court does not cure the deficiency." *See* Response at 72.

By way of background, Judge Watson attempted to disqualify members of the Hearing Panel on two separate occasions. The first of her motions for disqualification was filed on September 16, 2013, and was denominated as a Motion and Suggestion to Disqualify Alan Bookman, Esq. and Mayanne Downs, Esq. of the Judicial Qualifications Commission Hearing Panel and Supporting [sic]. By Order dated September 25, 2013, the Chair of the Hearing Panel denied the Motion to Disqualify as to Hearing Panel member Mayanne Downs, finding it

legally insufficient but *granted* the motion as to Hearing Panel member Alan Bookman, Esq. *See* Watson Appendix at Tab 22.

On February 10, 2014, the first day of proceedings before the Hearing Panel, Judge Watson filed the second of her motions to disqualify, which was denominated as a Motion to Disqualify Mayanne Downs, Esq., The Honorable Kerry Evander, The Honorable Robert Morris, and Michael Nachwalter, Esq. *See* Watson Appendix at Tab 22. That motion was, in turn, based on the fact that Judge Watson had sued Judges Evander and Morris and Attorneys Downs and Nachwalter in her Federal Court Action the preceding Friday. Based on the Federal Court Action, Judge Watson argued "[t]here was an obvious tension between [herself] and the individuals she sued" and "[t]here was clearly and [sic] incentive to rule one way or the other in an attempt to influence the outcome of this case, and thereby possibly limit their personal financial exposure in the United States District Court case." *See* Watson Appendix at 22.

Finding that motion to disqualify legally insufficient under Florida law, the Hearing Panel denied that motion as well. In so ruling, the Hearing Panel cited authority for the proposition that a party may not force a judge's recusal by simply filing suit against the judge. *See, e.g.*, *Kampfer v. Gokey*, 175 F.3d 1008 (2d Cir. 1999); *United States v. Pryor*, 960 F.2d 1, 3 (1st Cir. 1992) (rejecting claim that was judge was required to recuse himself "because of bias due to the fact that

defendant had brought a civil suit against him;" decision was for the judge, and "automatic recusal [cannot] be obtained by the single act of suing the judge").

The Supreme Court's decision in *Ward* does not stand for the proposition that a litigant is entitled to an interlocutory review of an order denying a motion for disqualification. At issue in *Ward* was whether the petitioner had been denied the due process right to a trial before an impartial judicial officer where he was tried, convicted and fined before the mayor of an Ohio village under a state statute which authorized mayors to sit as judges in cases involving ordinance violations and certain traffic offenses. *Id*. at 57. Of particular interest in *Ward* was that the mayor had responsibilities for both law enforcement and revenue production and that "[a] major part of village income [was] derived from the fines, forfeitures, costs, and fees imposed by [the mayor] in his mayor's court." *Id*. at 58.

In finding that the mayor's dual responsibilities for law enforcement and revenue generation resulted in a conflict of interest, the Court found that criminal defendants subject to trial before the mayor were necessarily deprived due process of law. *Id*. at 61-62. *Ward* has no application here. First, aside from generally asserting she was denied due process because the JQC's framework does not provide for interlocutory appeals of an order denying a motion for disqualification, Judge Watson has failed to articulate how the Hearing Panel erred when it determined certain of her motions for disqualification were legally insufficient.

Second, unlike the situation in *Ward* where the village's mayor had an inherent conflict which called his neutrality into question, Judge Watson has not identified any inherent conflict of any member of the Hearing Panel.

Judge Watson's due process argument based on the lack of an interlocutory review of the Hearing Panel's denial of her motions to disqualify is also inconsistent with this Court's prior precedent. In *In re Shea*, 759 So. 2d 631 (Fla. 2000), the respondent judge argued -- on this court's review of the hearing panel's recommendation of removal -- that the JQC's findings should be rejected in their entirety because the hearing panel denied his motion to disqualify a panel member. *Id*. at 638. Finding that the basis for Judge Shea's motion for disqualification did not satisfy the threshold to warrant disqualification, this Court held that the motion was properly denied. In so holding, this court gave no indication it could not review an order denying a motion for disqualification as part of its normal review of a hearing panel's findings and recommendation of discipline. *See also D.H. ex rel J.R. v. Dept. of Children & Families*, 12 So. 3d 366 (Fla. 1st DCA 2009) (observing that an order denying a motion for disqualification may be reviewed on direct appeal as well as by a writ of prohibition).

III. JUDGE WATSON'S CONTENTION THAT THE JQC IS NOT IN SUBSTANTIAL COMPLIANCE WITH ITS PROCEDURAL RULES BECAUSE OF THE MANNER IN WHICH IT HAS HANDLED OTHER JQC INVESTIGATIONS IS NOT RELEVANT TO THESE PROCEEDINGS

In yet another attempt to discredit the JQC, Judge Watson argues that "[i]n practice and [as] demonstrated hereafter, the JQC has not followed the dictates of Rule 6(j), FJQCR and has engaged in a course of conduct wherein the Investigative Panel does not report the finding of probable cause in certain cases and does not file formal charges against errant judges with the Florida Supreme Court." *See* Response at 58. Continuing, she argues that "[i]nstead the Commission enters into confidential settlements that are hidden from the Florida Supreme Court and the public." *Id.* Judge Watson further argues that "the JQC continues to give preferential treatment to some judges by ignoring its duty to file formal charges with the Florida Supreme Court", while in her case, "abus[ing] its power and improperly fil[ing] formal charges against her for alleged and disputed attorney misconduct related to an attorneys' fee dispute that occurred approximately ten (10) years prior to [her] becoming a judge." *See* Response at 61.

As an example of the JQC's alleged abuse of its discretion by not filing charges where warranted, Judge Watson cites to *Inquiry Concerning A Judge, The Honorable Gisele Pollack*, Inquiry Nos. 13-633, 14-151, and 14-187, which is currently pending before this Court. This Court has steadfastly adhered to the

general notion that accusations regarding the misconduct of others have no bearing on whether a judge is fit for office. Rather, the proper scope of any JQC proceeding should remain on the ***respondent judge's*** present fitness to hold office. This Court addressed a somewhat analogous situation in *Graham*:

> Regrettably, in his appearance before the JQC, in his brief, and in his oral argument to this Court, Graham only obliquely addressed the critical issue of his present fitness to serve as a judge. Instead, he focuses his arguments on the conduct of other officials, attorneys, and citizens of Citrus County. ***Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant to our determination of his ability to administer justice fairly and professionally***.

Graham, 620 So. 2d at 1275 (emphasis added); *see also In re Shea*, 759 So. 2d 631, 638 (Fla. 2000) (citing *Graham* and stating, "Judge Shea's allegations of improper conduct on the part of others do not excuse his abuse of office."). Applying *Graham's* rationale here, this Court should likewise reject Judge Watson's attempt to deflect scrutiny of her unethical conduct by scrutinizing the JQC's prosecutorial decisions in other cases.

IV. JUDGE WATSON WAS NOT DENIED DUE PROCESS BASED ON THE JQC'S ALLEGED DISCOVERY VIOLATIONS

Judge Watson claims that her due process rights were violated because despite both a demand under Rule 12(b) of the JQC's Rules and a Request for Production, Miles McGrane, Special Counsel to the Investigative Panel, withheld

several documents in discovery. *See* Response at 62. This identical argument was raised by Judge Watson in an omnibus motion she filed on January 13, 2014, entitled, *Judge Watson's Motion to Compel Documents, Motion for Sanctions, Motion to Overrule All Claims of Privilege or Confidentiality Based on Voluntary Disclosure and Failure to File a Privilege Log, Motion to Reopen Discovery, Permit Completion of Suspended Deposition of Complaining Witness Larry Stewart and to Continue the February 10, 2014 Trial* (hereinafter collectively referred to as "Motion to Compel").

On January 17, 2014, Judge Kerry Evander, as Chair of the Hearing Panel, conducted a telephonic hearing on Judge Watson's Motion to Compel. As evidenced by the following colloquy, Mr. McGrane was specifically questioned as to whether the JQC had failed to produce any documents that had been requested by Judge Watson:

> *THE COURT: Let me just narrow the issues.*
>
> *Mr. McGrane, are you aware of anything that is being requested by Mr. Sweetapple that has not been produced?*
>
> *MR. McGRANE:* ***No, sir****.*
>
> *THE COURT: I mean today. I know that previously he requested various documents.*
>
> *But as far as what he requested today, are you aware of any documents that have not been produced?*

MR. McGRANE: ***No, sir***.

See Transcript of Proceedings (Telephonic Hearing) before The Honorable Kerry Evander taken on January 17, 2014 at p. 44, lines 13-23, a copy of which is contained in the JQC's Appendix at Exhibit 1.

Following the hearing, the matter was taken under advisement and on January 22, 2014, Judge Evander issued an Order on Pending Motions in which he denied Judge Watson's Motion to Compel. In denying the Motion to Compel, Judge Evander noted that several allegations of "lawyer misconduct" had been made against Mr. McGrane during the discovery process and that the "allegations of misconduct [were] found to be unsupported and Respondent's Motion to Compel [was] denied in its entirety. *See* Order on Pending Motions at 6, Watson Appendix at Tab 53.[3]

[3] In an attempt to cast further doubt on the integrity of the proceedings, Judge Watson cites to "irregularities," stemming from Mr. McGrane's service as Chair of the JQC and his roles as special counsel to both the Investigative Panel and the Hearing Panel. *See* Response at 5-6. Judge Watson's accusations are unfounded. Mr. McGrane's term on the JQC ended December 31, 2012. Immediately prior to the expiration of his term, Mr. McGrane served as Chair of the JQC. Prior to the expiration of his term, Mr. McGrane had no knowledge of the Watson inquiry. The Watson inquiry was not referred to an investigative panel of the JQC until after Mr. McGrane's term on the JQC ended. Additionally, Mr. McGrane only served as Special Counsel to the Investigative Panel. He has never served as Special Counsel to the Hearing Panel. Lauri Waldman Ross is Special Counsel to the Hearing Panel in this matter.

V. JUDGE WATSON HAS NOT DEMONSTRATED ANY PREJUDICE RESULTING FROM THE JQC'S AMENDED RULES

In accordance with art. 5, section 12(a)(2)(4) of the Florida Constitution, the JQC is empowered to "adopt rules regulating its proceedings." Section 12(a)(4) further provides that "[t]he commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the [Florida] legislature, or by the supreme court, five justices concurring." This Court's website likewise provides that the JQC "is not part of the Florida Supreme Court or the state courts and operates under rules it establishes for itself."

Judge Watson is correct that on or about September 30, 2011, the JQC submitted amendments to its operating rules to the Florida Supreme Court. The submission to this Court was actually denominated as a Notice of Adoption of Amendments to the Rules of the Florida Judicial Qualifications Commission ("Notice of Rules Amendment"). The Notice of Rules Amendment was docketed in this Court as Case No. SC-1897. By Order dated August 2, 2011, this Court issued the following order, the text of which is set forth in full below:

> The Florida Judicial Qualifications Commission submitted revisions to the Florida Judicial Qualifications Commission Rules to this Court for our review. The proposed revisions have been published in The Florida Bar News, and no comments have been received. The Court having determined that it will not repeal any rule

> submitted by the commission, this case is deemed final. *See* Article V, Section 12(a)(4), Florida Constitution.

In re Amendments to the Florida Judicial Qualifications Commission Rules, 2012 WL 9335827 (Fla. 2012) (emphasis in original).

Against this backdrop, Judge Watson argues that "[b]ased upon the public filings, it appears that these *Unpublished* JQC Rules were not passed or published in accordance with Rule 2.140 of the Florida Rules of Judicial Administration as confirmed by the Clerk of the Florida Supreme Court." *See* Response at 66-70. Of course, the fallacy in this argument is that Fla. R. Jud. Admin. 2.140 is not applicable to the JQC's adoption of its rules. This is easily demonstrated by this Court' reference to article v, section 12(a)(4) in the aforementioned order refusing to exercise its constitutional authority to repeal any of the JQC's rules.

To the extent that any confusion arose out of the JQC's adoption of the 2012 amended rules, it stems from the fact that due to an oversight, the 2012 amended rules (what Judge Watson refers to as the "*Unpublished* JQC Rules") were inadvertently not immediately posted on the JQC's website. Regardless, Judge Watson has not demonstrated how she was prejudiced by application of the

Amended Rules or, stated differently, how any rights she may have had under the previous rules were abridged under the Amended Rules.[4]

VI. THE JQC'S BASIS FOR JURISDICTION STEMS FROM THE FLORIDA CONSTITUTION, NOT THE FLORIDA BAR

In a further attempt to divert the Court's attention away from her own conduct, Judge Watson argues that because the JQC's jurisdiction over her is derivative of The Florida Bar's jurisdiction over her, and because The Florida Bar is time-barred from prosecuting her, the JQC is likewise estopped. Specifically, she argues:

> The Florida Bar never filed formal charges against Watson and the statute of limitations for them to do so has long since expired. The *Notice of Formal Charges* in the instant case only contains allegations for which the Florida Bar never filed *and could never legally file a formal complaint* because, even if true, the statute of limitations has expired.

See Response at 101. As elaborated upon below, this argument is a red herring.

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[4] Judge Watson also complains that "[g]enerally when a rule is amended an appendix to the opinion adopting the changes is attached, identifying deletions by struck-through type, and indicating additions to the rule underscoring the added language" and "[t]here simply is no appendix to the opinion in *In re Amendments to the Florida Judicial Qualifications Commission Rules*, 2012 WL 9335827 (Fla.) reflecting proposed changes to the FJQCR rules." *See* Response at 69 (footnote omitted). Although there is no appendix to the court's order declining to repeal any of the Amended Rules, that fact does not alter the constitutional scheme regarding how the JQC's rules are amended. The Amended Rules are published in the 2014 version of *The Florida Rules of Court* (pp. 2257-2263); however, the JQC wishes to make clear that it has no control over Thompson Reuter's decision to publish or not publish any amendments to its rules.

The JQC's jurisdiction in this matter stems from the Florida Constitution and cannot be circumscribed, or otherwise limited, by any affirmative action, or forbearance, of The Florida Bar. Thus, irrespective of whether The Florida Bar initiated disciplinary proceedings against Judge Watson while she was a lawyer; initiated disciplinary proceedings while she was a lawyer and then suspended those proceedings pending the outcome of civil litigation between the parties giving rise to those proceedings; or even had Larry Stewart never filed a complaint with The Florida Bar at any time -- once attorney Watson became a judge, the JQC acquired jurisdiction over her and was constitutionally authorized to investigate and recommend discipline of her based on her conduct during her "term of office or otherwise occurring on or after November 1, 1966 . . . ." *See* Article v, section 12(a)(1), Florida Constitution.[5] Nothing The Florida Bar did, or failed to do, can diminish the JQC's constitutional grant of jurisdiction.

Parenthetically, Judge Watson also argues that "[t]here was no delay attributable to [her]." *See* Response at 102. That claim is belied by a Notice of Filing in these proceedings on January 21, 2014 by The Florida Bar (and alluded to by the Hearing Panel) in which the Bar filed a letter from Judge Watson's counsel

[5] Inexplicably, and naturally without citation to any authority, Judge Watson argues that "the JQC can only investigate matters occurring within a reasonable time – but not to exceed two years – and only if they are germane to an alleged act of misconduct occurring after the judge takes office." *See* Response at 102-03.

dated November 14, 2008, in which he requested that the Bar defer consideration of the disciplinary proceedings against Judge Watson until after the outcome of her appeal of the Final Judgment entered by Judge Crow ("Deferral Letter"). *See* JQC Appendix at Exhibit 2. By letter dated April 13, 2009, the Bar notified Judge Watson that the Bar's Board of Governors concurred with the grievance committee's deferral of its consideration of the disciplinary complaint against her, pending the conclusion of all appellate proceedings. *See* Recommendation at 3 (referencing Florida Bar's Notice of Filing dated January 14, 2014). *See also* JQC Appendix at Exhibit 2.[6]

Despite the evidence that Judge Watson sought, and received, from the Bar a deferral of prosecution which last approximately three (3) years, **the JQC does not consider Judge Watson's request for a deferral, or The Florida Bar's response thereto, to be dispositive of any issue pertaining to the JQC's jurisdiction in this matter**. The JQC simply references the Deferral Letter so that this Court can

[6] The date of The Florida Bar's Notice of Filing was actually January 21, 2014, not January 14, 2014 as stated in the Recommendation.

fairly weigh the validity of Judge Watson's assertion that no delay in the Bar's prosecution of her was attributable to her own actions.[7]

VII. THE HEARING PANEL'S RECOMMENDED DISCIPLINE IS APPROPRIATE AND SUPPORTED BY THE RECORD

This Court is constitutionally authorized to remove from office any judge who engages in conduct "unbecoming a member of the judiciary demonstrating a present unfitness to hold office . . . " Art. v, section 12(c)(1), Florida Constitution. As this court noted in *In re Sloop*, 946 So. 2d 1046 (Fla. 2007), "[t]he standard of fitness to hold office calls for examination of the misconduct from two perspectives: its effect on the public's trust and confidence as reflected in its impact on the judge's standing in the community, and the degree to which past misconduct points to future misconduct fundamentally inconsistent with the responsibilities of judicial office." *Id*. at 1055. Additionally, "[a] judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others." *In re Graham*, 620 So. 2d 1273, 1276 (Fla. 1993).

Applying these principles, the Hearing Panel found that while still practicing law, Judge Watson violated several Rules Regulating the Florida Bar and that in

[7] The operation of the statute of limitations contained in Rule 3-7.16 of The Rules Regulating the Florida Bar is currently the subject of two disciplinary cases pending in this Court involving two of the PIP lawyers, Gary Marks and Amir Fleisher. *See The Florida Bar v. Fleischer*, SC No. 13-391 and *The Florida Bar v. Marks,* SC No. 13-392.

doing so, "[t]emptation overrode [her] ethics, despite advance warning." *See* Recommendation at 38. As this Court admonished in *In Henson*, "[neither] those who appear before [a judge] nor the public at large can have confidence in a judge who has committed . . . flagrant violations of our ethics rules." *Henson*, 913 So. 2d at 582 (approving JQC recommendation of removal where judge was found to have violated professional rules of conduct prior to assuming bench when he advised a client to flee the jurisdiction in order to avoid trial).

Far from expressing remorse for her conduct, Judge Watson has gone to great lengths to trivialize it. For instance, she argues in her Response that "***Judge Crow flatly rejected all claims against her personally***, but simply found an "'unjust enrichment theory'" as an equitable device to compensate Stewart for recovering PIP fees that he expressly disclaimed, in writing." *See* Response at 2-3 (emphasis added). Elsewhere in her Response she claims that ***"[a]fter the bad faith lawyers lost the civil suit against her personally.*** . . ." *Id*. at 3 (emphasis added). She even goes so far as to proclaim she was "exonerated" in the trial before Judge Crow. *See* Response at 3, n.10.

While proclaiming her "personal" innocence, however, Judge Watson refuses to acknowledge that she acted through her professional association, Laura M. Watson, P.A., at all material times and that her professional association did not violate the Rules Regulating the Florida Bar; rather, she did. Her insinuation that

she has a separate identity from her professional association for purposes of violating the ethical rules is nonsensical and collapses under the weight of its own logic.

Finally, Judge Watson's suggestion that she should not be removed from office because she won popular election in November 2012 despite the public's awareness of the fallout resulting from the Gold Coast case, is immaterial. This court has previously concluded that a judge should be removed from office if he or she "'commits a grievous wrong which ***should*** erode confidence in the judiciary,' independent of its actual public impact.'" *Sloop*, 946 So. 2d at 1055 (quoting *In re: Lamotte*, 341 So. 2d 513, 518 (Fla. 1977) (emphasis added)).

As this Court observed in *Sloop*, "[j]udges stand at the pinnacle of the judicial system, and each judge in this State represents the face of justice." *Sloop*, 946 So. 2d at 1049. Judge Watson's actions cast aspersions on the very heart of the justice system. The Hearing Panel justifiably concluded that it had no faith in Judge Watson's judgment. Her factual disagreements with the Hearing Panel's findings simply reweigh the evidence without giving due deference to the fact finding responsibilities of the Hearing Panel. That is particularly true as to the Hearing Panel's recommendations of discipline. *Kinsey*, 842 So. 2d at 95-96

(observing that "the recommendations of the JQC as to discipline have persuasive force and should be given great weight.") (Pariente, J., concurring).[8]

The Hearing Panel had the opportunity to observe Judge Watson during three days of trial and form its own conclusions concerning her candor and remorse. Its recommendation of removal is based upon a well-documented record that includes conduct that shocks the sensibilities and for which any penalty short of removal would diminish the image of the judicial system in the eyes of the public. Prior opinions of this Court "have linked the determination of fitness to remain in office to the effect of misconduct on public trust and confidence in the judges involved." *In re Sloop,* 946 So. 2d at 1055. The Hearing Panel did not lightly recommend removal. Instead, it wrote a measured analysis of why removal was both required and consistent with discipline imposed in other cases. In short, the Hearing Panel determined that Judge Watson committed multiple ethical violations and that she had forfeited the privilege to stand in judgment of others.

[8] Case law makes clear that this Court very rarely rejects a recommendation of removal. Only two such cases are readily discovered, *In re Davey*, 645 So. 2d 398 (Fla. 1994) and *In re Boyd*, 308 So. 2d 13 (Fla. 1975). Both of those cases feature unusual facts significantly different this instant case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Findings, Conclusions, and Recommendations of the Hearing Panel of the Judicial Qualifications Commission be approved.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief was generated using Times New Roman 14-point font and otherwise complies with Florida Rule of Appellate Procedure 9.210(a)(2).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FLORIDA JUDICIAL QUALIFICATIONS COMMISSION'S REPLY BRIEF** has been furnished by **E-Mail** on this 31st day of July, 2014 to the following:

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